

Isolated or occasional sales of tangible personal property at retail by persons who do not hold themselves out as being engaged (or who do not habitually engage) in selling such tangible personal property at retail do not constitute engaging in a business of selling such tangible personal property at retail. See 86 Ill. Adm. Code 130.110. (This is a PLR.)

January 6, 1999

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your representative's letter dated September 28, 1998. Review of the request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in the request.

In the letter, your representative stated and made inquiry as follows:

Please find enclosed a Ruling Request regarding sales and use taxation for your consideration. Because of the timing involved in completing the contemplated transactions, I would appreciate an expedited review and reply on this matter at your earliest convenience.

If there should be any questions, concerns or need for discussion, please do not hesitate to call me directly at #####.

The attached Ruling Request reads as follows:

On behalf of , we respectfully request a letter ruling on whether, under Illinois law, the transfer of the following items of tangible personal property from COMPANY's operating subsidiaries pursuant to a proposed concurrent IRC § 332 liquidation and merger is exempt from Illinois Retailer's Occupation and Use Tax taxation:

- (i) The transfer of the business assets such as furniture, fixtures, equipment and supplies used in COMPANY's equipment rental business operations;
- (ii) The transfer of inventory and rental equipment used in COMPANY's equipment rental business operations; and
- (iii) The transfer of motor vehicles (non-rental property) used in COMPANY's equipment rental business operations.

These issues are not currently under investigation or audit by the Illinois Department of Revenue ('Department'). Furthermore, COMPANY is not presently pursuing any protest, litigation or negotiation on these issues with the Department nor is it aware of these issues being before the Department with respect to any other taxpayer.

Statement of Relevant Facts

COMPANY is engaged in the equipment rental business. COMPANY currently conducts its equipment rental operations through several operating subsidiaries with locations in approximately 25 states. Currently, the corporate structure of COMPANY consists of three tiers: (1st Tier) COMPANY1, the parent holding company; (2nd Tier) COMPANY2, and COMPANY3, the intermediate holding companies; and (3rd Tier) the operating subsidiaries. Although COMPANY's headquarters is located in CITY/STATE, one operating subsidiary of COMPANY engages in rental operations in Illinois.

In order to form a more optimal and efficient corporate structure, COMPANY wishes to collapse its operating subsidiaries and intermediate holding companies into a singular intermediate holding company by a concurrent IRC § 332 liquidation and merger of the subsidiaries and the holding company. Importantly, the actual ownership interest by COMPANY in the assets of the intermediate holding company will be the same prior to and subsequent to the liquidation and merger.

Analysis and Application of Illinois

(i) *The transfer of furniture, fixtures, equipment and supplies*

The Illinois Retailer's Occupation Tax ('ROT') is imposed on every person who engages in the business of selling tangible personal property for retail in Illinois.¹ The Illinois use tax ('UT') complements the ROT and is imposed on the privilege of using in Illinois tangible personal property purchased anywhere at retail from a retailer.² UT is not imposed if the seller of the property would not be subject to ROT despite all elements of the sale occurring in Illinois.³

Under Illinois law, an isolated or occasional sale of property at retail by a person who does not hold itself out as being engaged in selling such property or by a person not habitually engaged in selling such property is not subject to ROT or UT.⁴ 'If a retailer sells tangible personal property, such as machinery or other capital assets, which he has used in his business and no longer needs, and which he does not otherwise engage in selling, he does not incur Retailer's Occupation Tax liability when selling such tangible personal property even if the sales are at retail and even if he may be required to make a considerable number of such sales in order to dispose of such tangible personal property, because such sales are isolated or occasional and do not constitute a business of selling tangible personal property at retail.'⁵ Accordingly, isolated sales of

furniture, fixtures, equipment and supplies are exempt from the Illinois ROT. In addition, because the UT does not apply in situations where the transaction is exempt from the ROT, isolated sales of business assets such as furniture and fixtures are also exempt from the Illinois UT.

The furniture, fixtures, equipment and supplies to be transferred to COMPANY from the operating subsidiaries are capital assets. The COMPANY operating subsidiaries have used these assets in the business and do not otherwise engage in selling these assets. Consequently, under Illinois law, the transfer of furniture, fixtures, equipment and supplies from the operating subsidiaries to COMPANY pursuant to a concurrent IRC § 332 liquidation and merger constitutes an isolated or occasional sale and is exempt from the Illinois Retailer's Occupation and Use Taxes.

(ii) *The transfer of inventory and rental equipment*

As stated above, the ROT is imposed on every person who engages in the business of selling tangible personal property for retail in Illinois.⁶ The Illinois use tax ('UT') complements the ROT and is imposed on the privilege of using in Illinois tangible personal property purchased anywhere at retail from a retailer.⁷ UT is not imposed if the seller of the property would not be subject to ROT despite all elements of the sale occurring in Illinois.⁸ Importantly, under Illinois law sales of tangible personal property for resale are exempt from the Illinois ROT and UT.⁹

The inventory that will be transferred from the COMPANY operating subsidiary to COMPANY will be resold by COMPANY to its customers. Consequently, the transfer of the inventory to COMPANY from the operating subsidiary pursuant to a concurrent IRC § 332 liquidation and merger is a sale for resale and exempt from the Illinois ROT and UT taxes.

In Illinois, the rental or lease of tangible personal property is generally not subject to ROT and UT taxation, thus lessors are deemed to be the users of the items they purchase for rental purposes.¹⁰ Consequently, unless otherwise exempt, sales of property to lessors are subject to ROT and UT in Illinois.¹¹

Under Illinois law, the isolated or occasional sale of tangible personal property by a person who does not hold himself out as being engaged in selling such property is excluded from the definition of selling at retail.¹² However, the casual sale exemption does not apply to sales of machinery or other capital assets used in the business if the transferor otherwise engages in selling such items.¹³

In a private letter ruling, the Illinois Department of Revenue ('IDOR') held that the liquidation of a leasing portfolio of computers did not qualify as a casual sale since the company also engaged in the retail sale of computers.¹⁴ In addition, in another private letter ruling the IDOR states that 'if someone is strictly a lessor who is not otherwise engaged in selling at retail, then that person incurs no Retailers' Occupation [sales] Tax liability when selling items no longer needed for the rental inventory. Such sales would qualify as non-taxable occasional sales. However, if a person is a lessor and is also otherwise engaged in selling at retail, then all of that person's sales, including sales of items coming off-lease, are subject to Retailers' Occupation [sales] Tax.'¹⁵ This letter ruling was issued with respect to the sale and rental of video tapes.

The COMPANY operating subsidiary is engaged in renting its equipment and selling it only when it is no longer needed for the rental inventory. Thus, the transfer of the rental equipment from the COMPANY subsidiary to COMPANY pursuant to an IRC §332 liquidation and concurrent merger qualifies as an isolated or occasional sale and is exempt from the Illinois ROT and UT.

(iii) *The transfer of motor vehicles (non-rental property)*

Sales of motor vehicles made by a dealer, lending institution, leasing agency, or retailer are generally subject to the ROT and UT in Illinois.¹⁶ However, an Illinois regulation provides that 'an isolated or occasional sale of property at retail by a person who does not hold itself out as being engaged in selling such property or by a person not habitually engaged in selling such property is not subject to ROT or UT.'¹⁷ Accordingly, isolated sales of motor vehicles (non-rental) are exempt from the Illinois ROT. In addition, due to the fact that the UT is a complementary tax and does not apply in situations where the transaction is exempt from the ROT, isolated sales of motor vehicles (non-rental) are also exempt from the Illinois UT.

The non-rental motor vehicles to be transferred to COMPANY from the operating subsidiaries are non-inventory business assets. Moreover, the COMPANY operating subsidiaries are not engaged in the business of selling these business assets. Consequently, under Illinois law, the transfer of non-rental motor vehicles from the operating subsidiaries to COMPANY pursuant to a concurrent IRC § 332 liquidation and merger constitutes an isolated sale and is exempt from the Illinois Retailer's Occupation and Use Tax Taxes.

Although transfers of tangible personal property pursuant to a statutory merger are generally considered exempt from sales tax, transfers of motor vehicles are subject to tax. However, Illinois law provides that the tax rate shall be \$15 for each motor vehicle acquired in connection with the 'organization, reorganization, dissolution or partial liquidation of an incorporated or unincorporated business wherein the beneficial ownership is not changed' when tax has previously been paid on such vehicle.¹⁸

Ruling Requested

We respectfully request that the Department rule that the transfer of COMPANY's above-referenced tangible personal property pursuant to a concurrent IRC § 332 liquidation and merger is exempt from Illinois ROT and UT taxation. Specifically, we request a ruling determination that:

- (i) COMPANY's transfer of furniture, fixtures, equipment and supplies used in COMPANY's equipment rental business operations is exempt from Illinois ROT and UT taxation;
- (ii) COMPANY's transfer of inventory and rental equipment used in COMPANY's equipment rental business operations is exempt from Illinois ROT and UT taxation; and
- (iii) COMPANY's transfer of motor vehicles (non-rental property) used in COMPANY's equipment rental business operations is exempt from Illinois ROT and UT taxation.

We look forward to hearing from you soon and appreciate your assistance in this matter. Should you have any questions or comments regarding this ruling request, please call me directly at #####.

I. Transfer of furniture, fixtures, equipment and supplies

Generally when stock is received in consideration of capital assets, a "sale at retail" has occurred. See 35 ILCS 120/1. Please note that in general, the transfer of capital assets pursuant to a reorganization may not be subject to sales/use tax liability in Illinois if the transferor of such capital assets has not ordinarily sold like-kind property at retail. Please see 86 Ill. Adm. Code 130.110, enclosed.

Isolated or occasional sales of tangible personal property at retail by persons who do not hold themselves out as being engaged (or who do not habitually engage) in selling such tangible personal property at retail do not constitute engaging in a business of selling such tangible personal property at retail. See 86 Ill. Adm. Code 130.110. Such persons do not incur Retailers' Occupation Tax liability on the gross receipts from such sales. Consequently, the purchasers of that tangible personal property do not incur a Use Tax liability on those purchases. See the enclosed copy of 86 Ill. Adm. Code 150.101.

In your letter, you state that the "furniture, fixtures, equipment and supplies to be transferred to COMPANY from the operating subsidiaries are capital assets. The COMPANY operating subsidiaries have used these assets in the business and do not otherwise engage in selling these assets." Since your client's operating subsidiaries do not otherwise engage in selling the assets it plans to transfer to your client, the sale would be considered an occasional sale and therefore will not incur Retailers' Occupation Tax or Use Tax liability.

II. Transfer of inventory and rental equipment

The transfer of a sales inventory of tangible personal property will be transferred tax-exempt if a resale certificate is provided. See 86 Ill. Adm. Code 130.210 and 130.1401, enclosed. However, the occasional sales exemption does not apply in situations where the transferor was engaged in the business of selling the tangible personal property to end users.

In regards to the lease inventory, the transfer of such tangible personal property generally subjects transferees to Use Tax liability on the cost price of such property. The property cannot be transferred subject to a sale for resale because the transferee will not be reselling the property and is considered the end user in Illinois. Further, the occasional sales exemption is generally not available when the property is both sold and leased because the transferor is in the business of selling like-kind property and such sales are generally subject to Retailers' Occupation Tax. You stated in your letter that your client is "engaged in renting its equipment and selling it only when it is no longer needed for the rental inventory." Since you have stated that your client is not in the business of selling like-kind property, then the occasional sales exemption would be available. See, 86 Ill. Adm. Code. 130.110, enclosed.

III. Transfer of motor vehicles (non-rental property)

As stated above, isolated or occasional sales of tangible personal property at retail by persons who do not hold themselves out as being engaged (or who do not habitually engage) in selling such tangible personal property at retail do not constitute engaging in a business of selling such tangible personal property at retail. See 86 Ill. Adm. Code 130.110.

Please note that while the motor vehicles being transferred may not be subject to Retailers' Occupation Tax because of the occasional sale exemption, motor vehicles will be subject to Vehicle Use Tax if they are retitled pursuant to a reorganization. Please see 86 Ill. Adm. Code 151.101 and 151.105, enclosed.

Please be informed that transferee liabilities may exist when the major part of business inventory, furniture or fixtures, machinery and equipment or real estate is transferred outside the ordinary course of business. Successor liability provisions in the Illinois Retailers Occupation Tax are found at 86 Ill. Adm. Code 130.1701, a copy of which is enclosed.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Bill Lundeen
Chief Counsel

BL:MJ:msk

ST 99-0001-PLR

Enc.

1 35 ILCS 120/14.
2 35 ILCS 105/3.
3 35 ILCS 105/3-65.
4 35 ILCS 120/1; 35 ILCS 105/2; 86 Ill. Adm. Code §§ 130.10 and 130.120(f).
5 86 Ill. Admn. Code § 130.110(b).
6 35 ILCS 120/14.
7 35 ILCS 105/3.
8 35 ILCS 105/3-65.
9 ROT Sec. 1 [35 ILCS 120/1]; UT Sec. 2 [35 ILCS 105/2].
10 86 Ill. Adm. Code Sec. 130.2010; 86 Ill. Adm. Code Sec. 150.1201; 86 Ill. Adm. Code Sec.
11 150.305(e).
12 86 Ill. Adm. Code Sec. 130.2010(b).
13 35 ILCS 120/1; 86 Ill. Admin. Code § 130.110.
14 35 ILCS 105/2; 35 ILCS 120/1; 86 Ill. Adm. Code Sec. 130.110; 86 Ill. Adm. Code Sec.
15 130/120(f).
16 Private Letter Ruling No. 92-0244, State of Illinois Department of Revenue (May 20, 1992).
17 Private Letter Ruling No. 92-0104, State of Illinois Department of Revenue (February 21, 1992).
18 LROT Sec. 3 [35 ILCS 120/3] UT Sec. 10 [35 ILCS 105/10]
19 Illinois Regulation, Section 130.110 and Section 130.120(f).
20 625 Ill. Comp. Stat. 5/3-1001.